

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

MICRO AGE INTEGRATION CO.,^{1/}

Employer

and

Case No. 31-RC-7750

TEAMSTERS AND WAREHOUSEMEN, LOCAL
381, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO ^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{3/}
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{4/}

INCLUDED: All full-time and regular part-time support specialists, training specialists, quality monitors and technical leads employed by the Employer at its facility located at 2100 South Blosser Road in Santa Maria, California.

EXCLUDED: All other employees, office clerical employees, JTN trainees, UPS trainees, support specialists during the probationary period (all employees employed by Corestaff), guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters and Warehousemen, Local 381, International Brotherhood of Teamsters, AFL-CIO.**

LISTS OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *National Labor Relations Board v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of the election eligibility list containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, the list must be received in the office of Region 31, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **December 6, 1999**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of the list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **December 13, 1999**.

DATED at Los Angeles, California this 29th day of November, 1999.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064-1824

FOOTNOTES

- 1/ The name of the Employer appears as corrected at the Hearing.
- 2/ The name of the Petitioner appears as corrected at the Hearing.
- 3/ The Employer, MicroAge Integration Co., is an Arizona corporation engaged in the business of providing technical and customer service support related to, inter alia, telephone services, bill collections and technical support. The Employer maintains facilities in Arizona, Nevada and California, including the facility involved herein located in Santa Maria, California. Within the past 12 months, the Employer has provided services valued in excess of \$50,000 directly to entities located outside the State of California. The Employer thus satisfies the statutory jurisdictional requirement, as well as the Board's discretionary standard, for asserting jurisdiction over non-retail establishments. *Siemons Mailing Service*, 122 NLRB 81 (1959).
- 4/ Petitioner seeks to represent a unit comprised of all full-time and regular part-time support specialists and trainers ("training specialists") employed by the Employer at Santa Maria, California. The parties agree that the appropriate unit should include support specialists and that office clerical employees, guards and supervisors should be excluded.

Petitioner asserts that tech leads and quality monitors must be excluded from the unit as supervisors as defined in the Act. Alternatively, Petitioner contends that tech leads and quality monitors do not share a community of interest with the appropriate unit.

The Employer seeks to include tech leads and quality monitors, and exclude training specialists from the unit. There is an additional issue as to whether or not certain trainees and probationary employees, employed by Corestaff Services ("Corestaff"), a temporary employment agency, are included in the appropriate unit.

FACTUAL BACKGROUND

The Employer provides technical and customer service related to telephone services, bill collections and technical support. It maintains facilities in Tempe, Arizona, Las Vegas,

Nevada, and Santa Maria, California. The Santa Maria telephone call center facility is the only facility involved herein. The majority of employees employed at the Santa Maria facility are as support specialists who take inbound telephone calls from the Employer's client, UPS, and from UPS' customers. Support specialists answer questions from the client and customers, troubleshoot problems, and dispatch on-site field support, if necessary.

There are approximately 140 support specialists, excluding employees of Corestaff, who are supervised by 5 floor supervisors. The parties agree, and the record reveals, that floor supervisors are supervisors within the meaning of Section 2(11) of the Act. Floor supervisors report directly to the site manager and indirectly to the human resources manager. Floor supervisors' duties include: monitoring the work performance and attendance of support specialists and tech leads; and providing coaching, feedback and disciplinary action to support specialists and tech leads. The Employer also employs tech leads, quality monitors and training specialists. Like the support specialists, tech leads report to floor supervisors. Neither the quality monitors nor the training specialists report to floor supervisors. Quality monitors report directly to a QTD manager. Training specialists report directly to the director of training.

TRAINEE AND PROBATIONARY SUPPORT SPECIALIST

The Employer seeks to include the trainees and probationary support specialists in the unit while Petitioner asserts they should be excluded.

It appears from the record that the Employer has a contract with Corestaff to provide candidates for employment at the Santa Maria facility. Individuals desiring work at Micro Age's facility in Santa Maria must first apply for employment through Corestaff. Corestaff sends these individuals to Micro Age's Santa Maria facility for training in either a "JTN" training program or UPS training program. It appears that the JTN program is a government assisted program lasting 2 weeks or less which provides individuals with limited skills an opportunity to develop additional skills. Individuals successfully completing the JTN program are placed in the UPS program.

Individuals having a higher degree of skills bypass the JTN training program, and are automatically placed in the UPS training program which lasts about 3 weeks. If an individual successfully completes the UPS training program, he or she would be then be placed “on the floor” as a probationary support specialist. For the first five days or so, an experienced support specialist mentors a probationary support specialist. This is known as the mentoring program. After approximately 90 days, the Employer may offer a probationary support specialist a permanent position on its own payroll. Corestaff employs all of the individuals working for the Employer during the training and probationary periods (approximately 90 days).

The parties stipulated and the evidence shows that Corestaff and MicroAge Integration Co. are joint employers of all trainee and probationary support specialists at the Santa Maria facility of MicroAge. Although given notice, Corestaff was not represented at the hearing. Corestaff was requested to provide a letter consenting to the inclusion of its employees located at the MicroAge Santa Maria facility in the petitioned-for unit. No such consent was given by Corestaff. The Employer in its brief contends that no Corestaff consent is required in order for these employees to be included in the unit and that they should be included. The Employer cites *Continental Winding*, 305 NLRB 122 (1991), in support of its position. The Petitioner seeks to have these employees excluded from the unit.

In *Continental Winding*, *supra*, an unfair labor practice case, the Board did find Continental Winding and Kelly Services, Inc., a temporary personnel service, were joint employers. It went on, however, to find no violation of Sections 8(a)(3) and (5) of the Act under a “joint employer of unit employees” theory for reasons totally unrelated to the issue of Kelly’s consent. (It did find violations of those sections of the Act under different theories not relevant here.) I conclude that *Continental Winding*, *supra*, does not support the Employer’s position in this representation case. It is well established that the Board does not include employees of a joint employer in a unit with employees of a single employer, as would be the situation here, absent consent of both employers. It is clear from the record no Corestaff consent is present in this case.

Accordingly, the trainee and probationary support staff specialists will be excluded from the unit. **Hexacomb Corp.**, 313 NLRB 983 (1994); **Greenhoot, Inc.**, 205 NLRB 250 (1973).

TRAINING SPECIALISTS: SUPERVISORY AND MANAGERIAL ANALYSIS

As noted *infra*, Petitioner seeks to include the training specialists in the petitioned-for unit. The Employer asserts that training specialists are statutory supervisors. Section 2(11)

of the Act states that the term “supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. **Chicago Metallic Corp.**, 273 NLRB 1677, 1689 (1985). It is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) of the Act does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. *Ibid.* Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. **Opelika Foundry**, 281 NLRB 897, 899 (1986).

The party attempting to exclude individuals from voting for a collective bargaining representative has the burden of demonstrating that such individuals are statutory supervisors. **Bennet Indus., Inc.**, 313 NLRB 1363 (1994); **Golden Fan Inn**, 281 NLRB 226, 229-230 fn. 24 (1986); **Tucson Gas & Elec. Co.**, 241 NLRB 181 (1979). For the reasons discussed below, I find that the Employer has not met its burden of proving that training specialists possess supervisory authority.

The Employer, at the time of the hearing, employed only one training specialist in Santa Maria, Tom Salinas. There were two training specialists but the lead training specialist was terminated in May, 1999; Salinas, the more junior training specialist, remained. The Employer adduced testimony regarding the responsibilities and duties of training specialists from the Employer's site manager at the Santa Maria facility. However, the witness had been site manager at the Santa Maria facility only a few weeks prior to the hearing. The witness admitted to not having first hand knowledge of many of the facts he testified to; he relied heavily on what he was told by the Employer's other management personnel in preparation for the hearing. Salinas testified about his responsibilities and duties. The director of training, the direct supervisor of training specialists, is not located in Santa Maria and did not testify.

In support of its contention that the training specialists are supervisors, the Employer asserts that training specialists exercise numerous responsibilities which demonstrate supervisory authority under Section 2(11) of the Act. As to training specialists authority to hire, the Employer produced evidence showing that Salinas interviewed one JTN training program applicant. Salinas admitted to interviewing another JTN applicant as well. In both situations, Salinas testified that he interviewed the individuals at the request of Corestaff's on-site representative. Apparently, the two candidates had been rejected by one of the Employer's floor supervisors. Salinas testified that Corestaff's on-site representative wanted a second opinion. Corestaff did eventually hire both individuals for placement in the JTN program at the Employer's facility. However, there is no evidence that the Corestaff on-site representative, without independent review, followed Salinas' recommendation to hire the two candidates.

As to hiring, the site manager testified that the Corestaff on-site representative initially screens the JTN candidates and "*if she feels*" that they meet the Employer's qualifications, she will call them back for an interview with one of the Employer's floor supervisors. Interviewing potential JTN candidates is not one of the training specialists' regular duties. Salinas testified that he was never asked, or given authority, by the Employer to interview employment applicants. The record reveals that Salinas interviewed JTN candidates on only two occasions. There is no evidence that any other

training specialist interviewed employment applicants. An individual must *consistently* display independent judgment in performing one of the functions in Section 2(11) to be a supervisor under the Act. ***House of Mosaics, Inc.***, 215 NLRB 704, 713 (1974). It has been repeatedly observed that no matter how formidable the task, a supervisory authority only sporadically, or infrequently to be found in a nonsupervisor, must be distinguished from a supervisor's constant possession of supervisory authority, regardless of the frequency of its use. ***The Ohio River Company***, 303 NLRB 696, 714 (1991); ***Kern Council Services***, 259 NLRB 817, 818 (1981).

The Employer asserts that training specialists have the sole authority to determine whether or not JTN and UPS trainees graduate from the respective programs. If a trainee does not graduate, he or she cannot become a permanent employee of the Employer. The Employer, therefore, claims that the training specialists have the ultimate authority in determining whether or not trainees (prospective employees) will be hired as permanent employees.

With respect to the JTN program, the record reveals the training specialist conducting the program follows a set curriculum and syllabus that the Employer's former training manager created. There are about five tests given throughout the JTN training program. These tests, created by the former training manager, are multiple choice and graded by the trainees themselves. While the record contains one memorandum created by a training specialist stating he was beginning to revise the JTN syllabus and was considering changing the position of one segment, there is no evidence of what, if anything, became of any proposed revisions. Salinas testified that he has conducted one JTN training program and that during his tenure as a training specialist no one has ever failed the JTN test. The site manager testified that JTN trainees usually graduate to the UPS training program if they meet a set criteria, namely attaining 85% on the tests and maintaining acceptable attendance. Salinas did not create these criteria. However, the site manager testified that, even if a JTN trainee met the criteria, Salinas could deny a trainee the privilege of moving on if he felt that the trainee was not competent. The site manager testified that this discretion was given to Salinas in a meeting he had with Salinas in June, 1999. Salinas denies being given this authority. The record reveals that there is no written job description of the training specialists' duties. The site manager acknowledged that, to his knowledge, Salinas has never exercised this authority. Mere

statements of authority, never exercised, are insufficient to justify a finding of supervisory status. *McAlester General Hospital*, 233 NLRB 589, 590, n. 8 (1977). Whether a decision is to be made on a supervisory or managerial issue, weighing the applicable factors involves a matter of ascertaining the degree of authority actually possessed and exercised. *The Ohio River Company*, 303 NLRB 696, 714 (1991).

Limited evidence was adduced pertaining to the UPS training program. In the past at Santa Maria it has been conducted by the more senior training specialist based upon a set curriculum and syllabus created by UPS. The record indicates that Salinas taught two segments in one of the UPS training programs, but was never responsible for conducting the entire UPS program. Tech leads and other qualified employees regularly instruct various segments of the program. It is not clear from the record what the training specialists' exact duties and responsibilities are with respect to the UPS training program. The site manager stated that he does not know how many tests are given, what the tests consists of, whether they are multiple choice, how they are scored, or who formulates the tests. The site manager testified that the same basic criteria (as the JTN program) are in effect with respect to graduating the UPS trainees, namely the 85% grade level and acceptable attendance. The site manager again, however, testified that Salinas has the discretion to recommend that the UPS trainees graduate, or not, despite meeting the criteria. Since Salinas has never conducted the UPS training program, he has never exercised this discretion. It also appears from the record that most, if not all, UPS trainees graduate from the program. Based on the foregoing evidence, I do not find that the training specialists exercise independent judgment by either hiring or effectively recommending hire of JTN trainees or UPS trainees for permanent positions with the Employer.

The Employer asserts that the training specialists' duties demonstrate statutory supervisory authority because they determine the starting and stopping times, as well as break times, for the training classes. Salinas testified that the JTN program follows a schedule set by the syllabus. The Employer further contends supervisory authority is shown by the fact the training specialists make assignments for the JTN and UPS trainees. However, the record reveals the assignments to be made in both courses are set by the curriculum

and syllabus. The assignments are contained in a technical support manual. A former employee testified that when she was in the JTN class, the class followed a syllabus.

In *House of Mosaics, Inc.*, *supra*, the Board affirmed the ALJ's holding that department leaders who trained employees and prepared daily and weekly worksheets were not statutory supervisors. The ALJ stated: "With respect to the training functions, what is required is no more than the ability of an experienced employee to instruct new employees as to how to do uncomplicated and unskilled work. Having the responsibility of training new employees does not invest the department leaders with supervisory authority within the meaning of the Act." *Id.* at 712. In the present case, the evidence indicates that the training specialists' training duties are similar to the department leaders in that the training specialists are required to instruct new employees as to how to do relatively uncomplicated and unskilled work. Therefore, the training specialists' duties described above do not confer supervisory authority as defined in the Act. *See Consolidated Services, Inc.*, 321 NLRB 845 (1996) (the Board found that senior cooks who train, and evaluate the performance of, cook trainees are not statutory supervisors).

The Employer contends that the training specialists' evaluations of trainees demonstrate supervisory authority. In support of this contention, the Employer proffered E-mail memoranda from Salinas to the floor supervisors commenting on the trainees' progress through the mentorship program. The site manager testified that the E-mail memoranda are not used in any way to determine whether a probationary employee is hired as a permanent employee of the Employer, but rather the facts recited in the memoranda may have the potential for terminating a trainee's employment. The site manager, however, testified that no one during his tenure at Santa Maria has been terminated because of the memoranda. He stated that at the Tempe facility, where he was previously site manager, he took recommendations from the training specialists, which resulted in the terminations of employees. However, the record does not indicate whether he automatically followed the Tempe training specialists recommendations or conducted an independent review. The record does not contain evidence that the training specialists at the facility are either required to, or have ever, submitted formal evaluations. Further, the record is inconclusive as to whether training specialists are required to complete evaluations. Even assuming that training specialists are required to submit evaluations, the record is devoid of

evidence revealing what the evaluations are used for, and how, if at all, they affect the trainees' terms and conditions of employment.

The Employer contends that the training specialists have the authority to discharge employees. The site manager testified that if a trainee in one of the training classes misbehaved or made a statement against company policy, the training specialists would have the responsibility to recommend termination. The site manager testified that on several occasions the training specialist in the Employer's Tempe facility recommended termination. The site manager, however, had difficulty remembering the specifics of those instances and did not elaborate on the termination process. He did not state whether someone above the training specialists conducts an independent investigation or makes an independent decision. Salinas denied having the authority to recommend termination. The site manager testified that Salinas has never exercised the authority to recommend termination. I find the record inconclusive as to whether training specialists at the Employer's Santa Maria facility have or have ever exercised the actual authority to recommend termination. The Board has held that conclusionary statements made by witnesses, without supporting evidence, do not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). The Board has also held that conflicting evidence does not establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Employer asserts that the training specialists have the authority to discipline the trainees or support specialists. The Employer points to one instance when Salinas orally warned a unit employee not to be in the mentoring area. The unit employee testified that Salinas pulled him aside and said, "If I catch you over here again, I'm going to write you up." Immediately after Salinas told this unit employee that he could be written up, the unit employee approached his own floor supervisor and asked about the policy. The supervisor confirmed the Employer's policy prohibiting support specialists from being in the mentoring area. Salinas testified that he was told by one of the floor supervisors that if he caught anyone in the mentoring area to send them to the floor supervisor. Salinas denies making the above statement and contends he was only telling the employee what the policy was. The record indicates no other assertion that Salinas or any other training specialist has ever disciplined or written-up a trainee or employee.

Even assuming that the one incident cited by the Employer constituted a verbal warning, there is no evidence in the record that the warning had an adverse effect on that employee's terms and conditions of employment. The one isolated incident cited by the Employer does not demonstrate that training specialists have and exercise the authority to discipline. The evidence does not establish the training specialists have the authority to discipline employees.

The Employer asserts that the training specialists use independent judgment to determine whether or not trainees need additional training even after the training period. The Employer proffered evidence that Salinas can pull support specialists off the floor for training even after their probationary period. However, the Employer does not explain how this responsibility conveys statutory supervisor status. Moreover, a support specialist testified that tech leads direct the support specialists to attend training. The support specialist further testified that quality monitors or tech leads usually conduct additional training sessions.

The Employer claims that the training specialists recruit and select experienced support specialists to instruct some of the UPS training course segments. In support of this claim, the site manager testified that Salinas has this responsibility. Salinas testified that he has the authority to take support specialists off the floor to conduct training sessions only with the approval of the floor supervisors. The Employer's evidence did not support its contention that the training specialists have the sole or independent authority to select support specialists to instruct UPS training segments without the prior approval of the floor supervisors. The evidence is insufficient to establish the training specialists use independent judgment to assign work by selecting support specialists to conduct some of the UPS training course segments.

The Employer asserts that the training specialists have the responsibility for verifying and signing the timecards of all trainees under their control. Additionally, the Employer asserts that the training specialist have the authority to authorize overtime for the mentors and mentees. The site manager testified that Salinas is responsible for verifying and signing the Corestaff timecards used to pay the trainees. The record reveals the JTN program trainees do not receive pay from Corestaff while attending that program.

Salinas testified that there are no timesheets for the JTN program since the trainees are not paid. The Employer proffered three timesheets signed by Salinas. Salinas acknowledged that he signed the timesheets for trainees who were in the mentoring program. An employee witness testified that he was responsible for collecting the timesheets and approached Salinas only after his floor supervisor and tech lead were not available. There is no evidence in the record that Salinas signed timesheets other than the three proffered by the Employer. The record indicates that the timesheets are submitted to Corestaff, who pays the trainees. Initialing time cards to verify hours worked does not require a finding of supervisory status. *John N. Hansen Co.*, 294 NLRB 63, 64 (1989). Signing of time cards is a routine clerical function which is not indicative of supervisory status. *Walter J. Barnes Electrical Co.*, 188 NLRB 183, 188 (1971); *Lawson-United Feldspar*, 189 NLRB 350, ALJD at 354 (1971). As to training specialists' authority to authorize overtime, the only supporting evidence is contained in the 3 timesheets signed by Salinas which have columns showing overtime worked; each trainee had written in less than 1 hour total overtime for the weekly timesheet. Salinas testified he has no authority to authorize overtime for anyone, trainee or permanent employee. In light of the circumstances in which these 3 timesheets were initialed by Salinas and the lack of evidence that this was a regular practice or more than a routine clerical task, I conclude there is insufficient evidence to establish supervisory status.

The Employer contends training specialists' duties regarding the mentoring program demonstrate their exercise of Section 2(11) authority. A support specialist trainee spends about 5 days in the mentor program once he/she passes the UPS training course. In this program the trainee first responds to incoming calls while working with a mentor. The record contains a proposal created by Salinas, for this program which has been implemented at Santa Maria, according to the Employer. Salinas testified that a mentoring program was in place at Santa Maria and the Employer's other facilities and that he created his proposal of a modified program in response to a management request.

While the Employer claims training specialists select the mentors, the implemented proposal for this program indicates an employee is selected as a mentor based upon the approval of the employee's supervisor and their passing a mentor exam of 15 questions with a score of 9½ or better. The proposal elaborates in detail as to how scoring is to

be done and states that while the training department grades the exams, the supervisors notify the employees who took the exams of the result. The matching of trainees to mentors is done by the training department. Based upon the above and the record as a whole, the evidence is insufficient to establish that the training specialists possess supervisory authority within the meaning of Section 2(11) by virtue of their duties with regard to the mentoring program.

The Employer cited examples of secondary indicia in support of its assertion that Salinas is a statutory supervisor. These secondary indicia include: attending supervisory and management meetings, having an office aligned with management, having access to spaces within the Employer's facility designated for supervisors and managers, and being an exempt salaried employee.

According to the record, Salinas only attended one meeting of supervisors even though the Employer held an average of one to two meetings a week for supervisors. The site manager testified that Salinas has not been invited to these meetings despite the fact that these meetings have dealt with reviews and conversions of trainees to permanent employee status.

Unlike other petitioned-for employees, Salinas does have his own office. Salinas testified that the previous site manger told Salinas to use the office next door to the site manager's office, but if the site manager needed it, Salinas would have to move out. Salinas is an exempt salaried employee, as opposed to the support specialists, tech leads and quality monitors, who are paid on an hourly basis.

Salinas testified he was aware that he had keys to the classrooms and the Employer's back office but was unaware of any other exceptional access to the Employer's facilities. Employer witnesses testified that not even floor supervisors have access keys to as many areas within the Employer's facilities as Salinas has.

The Board has held that secondary indicia of statutory status does not transform an employee into a statutory supervisor in the absence of at least one of the enumerated indicia of Section 2(11) of the Act. *Tri-City Motor Co.*, 284 NLRB 659, 662 (1987). In the

instant case, the fact that Salinas is an exempt salaried employee with his own office does not establish supervisory status.

The burden of proving supervisory status rests on the party alleging that such status exists. *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environment Co.*, 308 NLRB 101, 102 (1992). Based on the foregoing and upon the record as a whole, I conclude that the Employer has not sustained the burden of proving that the training specialists possess the indicia of supervisory status as defined in Section 2(11) of the Act.

Alternatively, the Employer asserts that the training specialists are managerial employees; and therefore, are to be excluded from the unit. In *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974), the Court held that managerial employees were also excluded from the Act's protection. The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)(citing *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1947)).

The Court in *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980) stated that managerial employees are "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary." *Id.* at 682; *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 283 (1974).

The Employer asserts that training specialists are managerial employees because they are responsible for all aspects of the work performed by the training department. Specifically, the Employer claims that the training specialists have the overall responsibility for the development of training manuals, syllabuses and training courses. However, the evidence shows the training specialists' responsibilities with respect to

development of training programs and materials is very limited. Salinas testified that he merely followed set curricula and syllabuses in the JTN training program. The Employer did not proffer any documentary evidence supporting its contention that Salinas or any other training specialist developed a curriculum, syllabus or training materials with respect to the JTN training program. With respect to the UPS training program, Salinas testified that he has not yet conducted the UPS training program. Salinas merely taught approximately two segments of that program. The Employer did not proffer any documentary evidence supporting its contention that Salinas or any other training specialist developed a curriculum, syllabus or training materials with respect to the UPS training program. The only evidence that the Employer can point to is the mentor program proposals made by Salinas. However, Salinas testified that the mentor program was already established and developed prior to his proposals. The site manager testified that the mentor program was developed “a long time ago.” Moreover, Salinas testified that the criteria used in his mentor program proposals were already in existence. There is no evidence in the record that the mentor program was developed or formulated by a training specialist. The evidence in the record does not support the conclusion that Salinas or any other training specialist from the Santa Maria facility formulates and effectuates management policies. The evidence does not support a finding of managerial status, and therefore, I find that the training specialists are not managerial employees.

TRAINING SPECIALISTS: COMMUNITY OF INTEREST ANALYSIS

Neither the Petitioner nor the Employer took a position as to whether or not the training specialists share a community of interest with the appropriate unit.

Since I have concluded that the training specialists are not supervisors or managerial employees, the next issue is whether or not they should be included in the appropriate unit based upon their community of interest with other petitioned-for employees. The appropriateness of a given unit rests on the group of employees’ being united by a community of interest and free of substantial conflict of economic interests. *Armco, Inc.*, 271 NLRB 350, 351 (1984).

In conducting a community of interest analysis to determine whether the unit sought is an appropriate one, the Board examines a number of factors such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision, and differences or similarities in training and skills. *Atlanta Hilton & Towers*, 273 NLRB 87 (1984), *mod. on other grds.* 275 NLRB 1413 (1985); *Moore Business Forms, Inc.*, 173 NLRB 1133 (1968); *Harron Communications, Inc.*, 308 NLRB 62 (1992); *Allied Gear and Machine Co.*, 250 NLRB 679 (1980); *Associated Milk Products, Inc.*, 251 NLRB 1407 (1980); *R-N Market*, 190 NLRB 292 (1971); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

In the instant case the job duties of the other petitioned-for employees differ from those of the training specialists. Specifically, the support specialists and tech leads answer questions raised by incoming telephone calls from the Employer's client, UPS and from UPS customers. They provide answers to technical questions, troubleshoot problems and dispatch on-site field support if needed; the quality monitors monitor the quality of the telephonic answers given by the support specialists. The training specialists administer training programs and present some segments of the training for new staff members seeking to become permanent support specialist employees of the Employer. They do not regularly answer telephone calls from clients.

The training specialists have little work contact with support specialists once the support specialists pass the 90-day probationary period. After the probationary period, the only contact the training specialists have with the support specialists is during additional training classes, or in connection with support specialists instructing segments of a training course. The training specialists work in an area away from the floor where the support specialists and tech leads work. The training specialists have access to certain areas where the support specialists are prohibited, such as the quality monitors area, certain management areas, and the mentoring area. The training specialists are supervised by the Director of Training, whereas the support specialists and technical leads are supervised by floor supervisors. The training specialists are exempt salaried employees, whereas the support specialists are non-exempt hourly employees. The training specialists lunch and break hours vary according to their training schedule. Conversely, the support specialists

have set lunch and break hours according to their own schedule. The record does not reveal any history of collective bargaining for any of the petitioned-for employees.

The only similar community of interest factors that the training specialists and support specialists share are the benefits and break areas. With respect to benefits and break areas, all individuals, whether employees or management personnel, are offered the same fringe benefits, and have access to the break areas. While it appears that training specialists lack a community of interest with the other unit employees, I note that exclusion of this job classification from the unit would result in the one employee who was employed in this job classification at the time of the filing of the petition herein, being the only unrepresented employee at the facility. Thus, this employee effectively would be denied the opportunity to be represented in collective bargaining. See, *Victor Industries Corp.*, 215 NLRB 48 (1974); *South Carolina Education Assn.*, 240 NLRB 542 (1979). Thus, I will include this classification in the unit found appropriate.

TECH LEADS: SUPERVISORY ANALYSIS

The Petitioner seeks to exclude tech leads from the appropriate unit on the basis that they are statutory supervisors within the meaning of Section 2(11) of the Act. The Employer asserts that the tech leads are not statutory supervisors; and thus, should be included in the appropriate unit. As previously noted, the burden of proving supervisory status rests on the party alleging that such status exists. *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979).

At the time of the hearing, the record indicates that the Employer employed approximately 16 tech leads at its Santa Maria facility. Tech leads report directly to the floor supervisors. Tech leads assist support specialists with difficult or complex incoming telephone calls that the support specialists cannot answer. Support specialists call tech leads and ask them questions. Tech leads provide the answers. Tech leads do not talk directly to customers/clients except when customers/clients specifically ask to speak with a supervisor. Tech leads spend the majority of their time answering questions from support specialists. Quality monitors evaluate the telephone conversations between support specialists and customers/clients. They rate the support specialist on a 1 to 5

rating system known as a QME (evaluation). Tech leads and floor supervisors have the responsibility to review the quality monitor's QME with the support specialists.

It is clear that tech leads do not have the authority to hire, transfer, suspend, lay off, recall, discharge, discipline, or adjust support specialists' grievances, or effectively to recommend such actions. Issues raised regarding potential supervisory indicia possessed by tech leads include the authority to responsibly direct support specialists, the authority to reward, the authority to promote, and the authority to assign overtime.

A support specialist testified that tech leads direct support specialists to attend training classes (other than JTN or UPS training). However, the support specialist's testimony does not establish that the tech leads use independent judgment in directing support specialists to attend training. The fact that tech leads physically inform support specialists to attend training does not indicate who authorizes or decides extra training is appropriate.

"Kudo" calls are telephone calls from customers/clients complimenting or commending a support specialist's assistance. The support specialists forward "kudo" calls to the tech leads, who then make a record of the call. A support specialist is not required to have a certain number of "kudos" in order to be converted from probationary to permanent employee status. A support specialist is given a recognition plaque signed by his or her floor supervisor and the site manager if he or she receives a certain number of "kudos." While the number of "kudos" received are factored into raises, the evidence reveals that the number of "kudos" is only one of approximately seven factors in determining whether a support specialist receives a raise. More importantly, the record demonstrates that the tech leads do nothing more than merely record the "kudo" calls received. There is nothing in the record indicating tech leads, in performing their task of recording the number of "kudo" calls, use independent judgment in evaluating the support specialists in any way that affects their terms and conditions of employment.

Tech leads review QME tapes (recordings of support specialists responding to customer telephone calls) with support specialists, and go over QME scores with them. Tech leads give advice and suggestions to support specialists so the support specialists can improve

their telephone skills. Tech leads also conduct weekly meetings to review statistics, and to give advice to support specialists. There is no evidence that the tech leads use independent judgment in conducting these meetings. It is well established that the exercise of authority on the part of more skilled and experienced employees to assign and direct other employees in order to assure technical quality of the job does not itself confer supervisory status. *Brown and Root, Inc.*, 314 NLRB 19, 22 (1994); *United States Gypsum Co.*, 118 NLRB 20, 29-30 (1957); *Northern Chemical Industries*, 123 NLRB 77, 79 (1959); *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988). The fact that tech leads conduct weekly meetings and review QME results with the support specialists does not support the conclusion that they are statutory supervisors.

The record reveals that two tech leads have substituted for a floor supervisor for an unknown amount of time. The record does not indicate what authority these two individuals possessed while substituting for the supervisor. The record is devoid of evidence regarding what the current policy is with respect to tech leads substituting for supervisors. The Petitioner did not proffer evidence indicating whether or not the Employer has a policy of consistently and regularly substituting tech leads for supervisors while the supervisors are on lunch, breaks, vacation or sick leave. The Board has held that irregular or sporadic substitution for supervisors, such as during vacations and at other unscheduled times, does not confer supervisory status. *Hexacomb Corp.*, 313 NLRB 983, 984 (1994); *Gaines Electric Co.*, 309 NLRB 1077, 1078 (1992).

Petitioner asserts that tech leads have the authority to promote or effectively recommend the promotion of support specialists based upon the fact that tech leads may grade essay exams which are taken by support specialists seeking to qualify as tech leads. Support specialists take the essay examination only after approval by their floor supervisor. The record does not reveal how the essays are graded, what criteria is used, whether the floor supervisors independently review the tests, or what other factors are evaluated and by whom to grant promotions from support specialist to tech lead. Accordingly, the evidence is insufficient to demonstrate supervisory authority within the meaning of Section 2(11) based on grading of essay exams.

Petitioner further asserts that the tech leads possess authority to assign overtime. In this regard, a support specialist testified that he believed his tech lead had authority to grant overtime by virtue of the fact that his tech lead and floor supervisor both told him it was the Employer's policy that, should a support specialist be on a customer telephone call past his scheduled work hours, he should stay and complete the call. The evidence does not reveal the origin of this policy, any limits on the policy, or whether the extra time worked in such a situation is deemed paid overtime. This witness did state that he was not normally assigned overtime, he regularly recorded his hours via computer, and had never been denied overtime. I conclude that the evidence is insufficient to demonstrate that tech leads, rather than floor supervisors or other managers, have the authority to grant overtime.

As noted above, when customers/clients ask for a supervisor during a telephone call with a support specialist, the support specialists refer them to a tech lead. Such a policy does not confer statutory supervisory status. Job titles, without the exercise of statutory supervisory authority, are insufficient to establish supervisory status. *Bowne of Houston, Inc.*, 280 NRLB 1222, 1225 (1986).

For the foregoing reasons, I find that the evidence is insufficient to establish tech leads are supervisors within the meaning of Section 2(11) of the Act.

TECH LEADS: COMMUNITY OF INTEREST ANALYSIS

The Petitioner asserts, contrary to the Employer's position, that tech leads do not have a community of interest with the appropriate unit. The evidence in this case indicates that tech leads share a substantial community of interest with the support specialists. The tech leads and the support specialists are both non-exempt hourly employees receiving the same fringe benefits. They have scheduled lunches and breaks and have access to the same break room. They have substantial interchange and a close and direct working relationship. For the majority of their hours worked, tech leads and support specialists directly communicate with each other. When tech leads are not answering support specialists' questions, they are providing advice and suggestions to the support specialists. Tech leads review QME tapes and evaluations with support specialists. Like the support

specialists, tech leads are on the telephone most of the day. Both positions are integrated to provide efficiency in the technical support operation. If the support specialists cannot answer a customer/client's question, they ask the tech leads. Some support specialists substitute for tech leads. Finally, tech leads and support specialists are both supervised by floor supervisors.

The evidence clearly demonstrates that tech leads share a community of interest with support specialists. Accordingly, I find that tech leads should be included in the appropriate unit.

QUALITY MONITORS: SUPERVISORY ANALYSIS

The Petitioner seeks to exclude quality monitors on the basis that they are statutory supervisors as defined in Section 2(11) of the Act; the Employer asserts that they should be included in the appropriate unit.

At the time of the hearing, the Employer's Santa Maria facility employed five quality monitors. The quality monitors normally report to the QTD supervisor. However, at the time of the hearing, the Employer did not employ a QTD supervisor. Therefore, the quality monitors report directly to the QTD manager.

The quality monitors monitor and evaluate telephone conversations between the approximately 140 support specialists and customers/clients. They evaluate the telephone conversations of support specialists on a 1 to 5 grading system. The Employer's site manager testified that the evaluations (called "QME") are based on criteria set by the Employer. The QME's are then given to the floor supervisors and tech leads, who review QME's with the support specialists. Quality monitors do not provide feedback to support specialists. The uncontroverted evidence reveals that quality monitors do not have the authority to hire, transfer, suspend, lay off, recall, discharge, assign, discipline, responsibly direct or adjust support specialists' grievances, or effectively to recommend such action.

The Petitioner contends that the quality monitors' possess the authority to promote and reward. Floor supervisors are responsible for the performance evaluations of the support

specialists. The record indicates that the QME scores are used in the performance evaluations of support specialists, but are just one of approximately seven factors used in determining raises, promotions or shift bids (priority of selecting work hours). The other six factors include: attendance; call status (how long it takes for support specialists to answer a call); whether the support specialists perform mentoring tasks; after call work (computer generated timing of the support specialist's work after hanging up with customer/client); assisting on backup calls; and the number of "kudos" received. In order to qualify to act as a mentor in the mentor program, a support specialist needs a QME score of 4. However, the record reveals that the quality monitors do not select the mentor candidates. Quality monitors have no role in evaluating the other five factors used to determine raises, promotions or shift bids. The evidence appears to indicate that a support specialist automatically receives a \$10 gift certificate if he or she receives a QME score of 5; the record reveals that the \$10 gift certificate is distributed by floor supervisors.

Based upon the facts reviewed above, I conclude the quality monitor's assignment of QME scores does not establish that they have authority to use their independent judgment to promote or reward support specialists. The Board refrains from construing supervisory status too broadly because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environment Co.*, 308 NLRB 101, 102 (1992). I therefore find that the Petitioner has not sustained its burden to prove that quality monitors are statutory supervisors.

QUALITY MONITORS: COMMUNITY OF INTEREST ANALYSIS

The Petitioner asserts, contrary to the Employer's position, that quality monitors lack a community of interest with the appropriate unit. In analyzing this contention as required by the precedent reviewed above, I note the quality monitors, tech leads, and support specialists have common terms and conditions of employment: they are non-exempt hourly employees sharing the same fringe benefits; they have scheduled lunches and breaks and access to the same break room. The quality monitors, tech leads and support specialists are all functionally integrated to provide quality, efficiency and productivity in the Employer's technical support operation. The support specialists and the tech leads

share a close working relationship with each other and integrated into this relationship is the quality monitoring task. The quality monitors provide tech leads with QME evaluations and tapes of the support specialists' telephone conversations with customers/clients. The tech leads, in turn, use the quality monitors' QME evaluations and tapes to provide advice, suggestions and feedback to the support specialists.

While the quality monitors may not have daily physical contact with the support specialists, they, nevertheless, work closely with the support specialists in that they spend most of their day listening to, and evaluating, support specialists telephone conversations with customers/client. Both the quality monitors and the tech leads are able to listen in on telephone conversations between the support specialists and the customers/clients.

The quality monitors work in a different room than the tech leads and support specialists. The tech leads, but not support specialists, are permitted to enter the room where the quality monitors work. Although the quality monitors do not share common supervisors with the tech leads and support specialists, this fact does not preclude a finding of a shared community of interest. The record as a whole supports the conclusion that the quality monitors share a community of interest with the tech leads and the support specialists. Accordingly, I find that the quality monitors should be included in the appropriate unit.

There are approximately 159 employees in the unit found appropriate.

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